

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 135K.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 26, “Backflow Prevention Assembly Tester Registration,” Iowa Administrative Code.

The proposed amendments update references; add a periodic review of training courses and third-party certification programs; add additional grounds for denial of registration and discipline of a registered tester, including criminal history and discipline in another jurisdiction; add additional grounds for denial or revocation of approval for a training course; and raise registration fees and fees for trainers.

These proposed amendments have been reviewed by select individuals within the industry and posted on the Department’s Web site.

Following is a summary of the major changes from the existing chapter:

The registration fee is increased from \$60 to \$72 for a biennial registration. The registration renewal period is changed from August-September to July-September in odd-numbered years. The training course review fee is raised from \$100 to \$200. A notification fee for courses to be held is increased from \$25 to \$50.

Training organizations are required to resubmit course information every five years. Third-party certification organizations are required to resubmit program information every five years.

Additional grounds for denial of registration and discipline are added, including fraud in obtaining registration, criminal history, and discipline in another jurisdiction. Additional grounds for denial or revocation of approval for a training course are added, including submission of false information, falsification of training records, and physical or sexual abuse or harassment of a student or instructor.

Any interested person may make written suggestions or comments on these amendments prior to June 8, 2010. Written materials should be directed to Michael Magnant, Department of Public Health, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-4529; E-mail mmagnant@idph.state.ia.us.

There will be a public hearing on June 8, 2010, from 1 to 3 p.m. in Room 524, Lucas State Office Building, 321 E. 12th Street, Des Moines, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Public Health and advise staff of specific needs.

These amendments are intended to implement Iowa Code chapter 135K.

The following amendments are proposed.

ITEM 1. Amend rule **641—26.2(135K)**, definitions of “ASSE” and “Backflow prevention assembly,” as follows:

“ASSE” means the American Society of Sanitary Engineering, ~~28901 Clemens Road, Suite 100~~ 901 Canterbury Road, Suite A, Westlake, Ohio 44145.

“Backflow prevention assembly” for the purposes of this chapter means a device or means to prevent backflow into a potable water system for which a method of testing the device in-line has been published by the Foundation of Cross-Connection Control and Hydraulic Research at the University of Southern California.

NOTE: ~~As of May 7, 2003, the~~ The following assemblies are included under this definition. This is not intended to be an exclusive list. If new devices and test methods are introduced that meet the definition, they are included under the rules.

Backflow Prevention Assembly	Product Standards
Double Check Valve Assembly	ASSE 1015-99 <u>2009</u> , AWWA C510-97 <u>07</u>
Double Check Detector Assembly	ASSE 1048-99 <u>2009</u>
Pressure Vacuum Breaker	ASSE 1020-98 <u>2004</u>
Reduced Pressure Principle Backflow Preventer	ASSE 1013-99 <u>2009</u> , AWWA 511-97 <u>07</u>
Reduced Pressure Detector Assembly	ASSE 1047-99 <u>2009</u>
Spill Resistant Pressure Vacuum Breaker	ASSE 1056-2001

ITEM 2. Amend paragraph **26.4(1)“a”** as follows:

a. A person or organization that plans to conduct or sponsor a backflow prevention assembly tester training course in Iowa shall apply to the department for approval of the course at least 15 days before the first time the course is held. ~~If a training course has been approved prior to May 7, 2003, the sponsor is not required to reapply for approval.~~ If a training course was approved before [insert the effective date of these amendments], the person or organization responsible for the content of the course shall resubmit the information required by 26.4(1)“c.” The application shall include:

(1) Sponsoring organization name and Web site URL (if any), contact person, mailing address, E-mail address and telephone number.

(2) to (9) No change.

(10) A ~~\$100~~ \$200 nonrefundable fee.

ITEM 3. Reletter paragraphs **26.4(1)“c”** to **“f”** as **26.4(1)“d”** to **“g.”**

ITEM 4. Adopt the following new paragraph **26.4(1)“c”**:

c. For a course approved after [insert the effective date of these amendments], the person or organization responsible for the course content shall submit to the department the information required in paragraph 26.4(1)“a” within 30 calendar days of the fifth anniversary of the initial approval by the department and within 30 calendar days of the anniversary date of each fifth year thereafter. For training courses approved prior to [insert the effective date of these amendments], the person or organization responsible for the content of the course shall submit to the department the information required in paragraph 26.4(1)“a” within 30 calendar days of October 1, 2011, and within 30 calendar days of October 1 of each fifth year thereafter.

ITEM 5. Amend renumbered subparagraphs **26.4(1)“d”(1)** and **(4)** as follows:

(1) Sponsoring organization name and Web site URL (if any), contact person, mailing address, E-mail address, and telephone number.

(4) A ~~\$25~~ \$50 nonrefundable fee.

ITEM 6. Amend subparagraphs **26.4(2)“a”(1)** and **(8)** as follows:

(1) Sponsoring organization name and Web site URL (if any), contact person, mailing address, E-mail address, and telephone number.

(8) A ~~\$25~~ \$50 nonrefundable fee.

ITEM 7. Renumber subparagraphs **26.4(3)“a”(1)** to **(8)** as **26.4(3)“a”(2)** to **(9)**.

ITEM 8. Adopt the following new subparagraph **26.4(3)“a”(1)**:

(1) Agency name and Web site URL (if any), contact person, mailing address, E-mail address, and telephone number.

ITEM 9. Amend renumbered subparagraphs **26.4(3)“a”(2)** and **(9)** as follows:

(2) A ~~copy~~ description of the written examination and whether it is open- or closed-book and information about the arrangements for administration of the examination.

(9) A nonrefundable fee of ~~\$100~~ \$200.

ITEM 10. Adopt the following new paragraph **26.4(3)“c”**:

c. A third-party certification agency approved before [insert the effective date of these amendments] shall submit to the department the information required in paragraph 26.4(3)“a” on or within 30 calendar days before October 1, 2011, and on or within 30 calendar days before October 1 of each fifth year thereafter. A third-party certification agency approved after [insert the effective date of these amendments] shall submit to the department the information in paragraph 26.4(3)“a” on or within 30 calendar days before the fifth anniversary of the initial approval by the department and on or within 30 calendar days before the anniversary date of every fifth year thereafter.

ITEM 11. Amend subparagraph **26.5(1)“a”(3)**, Table, as follows:

Table 1
Registration Fees

Registration Month	Even Year		Odd Year	
	Fee	Registration Expiration	Fee	Registration Expiration
January - February	\$55 <u>66</u>	October 31 + one year	\$25 <u>30</u>	October 31
March - April	\$50 <u>60</u>	October 31 + one year	\$20 <u>24</u>	October 31
May - June	\$45 <u>54</u>	October 31 + one year	\$45 <u>18</u>	October 31
July - August	\$40 <u>48</u>	October 31 + one year	\$70 <u>84</u>	October 31 + two years
September - October	\$35 <u>42</u>	October 31 + one year	\$65 <u>78</u>	October 31 + two years
November - December	\$30 <u>36</u>	October 31	\$60 <u>72</u>	October 31 + one year

ITEM 12. Amend paragraph **26.5(2)“a”** as follows:

a. ~~Starting in 2005, except~~ Except as provided in subrule 26.5(1), each registered tester shall renew the registration between ~~August~~ July 1 and October 1 of each odd-numbered year. The registered tester shall submit:

(1) No change.

(2) Documentation that the registered tester has completed at least five hours of training in approved continuing education courses after October 31 of the previous odd-numbered year ~~(after June 30, 2003, for 2005)~~ or documentation that the registered tester is certified. Registered testers with an initial registration date of January 1 or later in an odd-numbered year are not required to obtain continuing education prior to renewal in that year.

(3) A nonrefundable fee of ~~\$60~~ \$72.

(4) No change.

ITEM 13. Rescind subrule 26.8(1) and adopt the following new subrule in lieu thereof:

26.8(1) The department may deny an application for registration or renewal, may suspend or revoke a registration, or may order a registered tester not to test or repair backflow prevention assemblies when the department finds that the applicant or registered tester has committed any of the following acts:

a. Negligence or incompetence in the testing of a backflow prevention assembly, including failure to report improper application or installation of a backflow prevention assembly to the facility owner and the administrative authority.

b. Knowingly submitting a false report of a test of a backflow prevention assembly to the owner of the facility, the local administrative authority, or the department.

c. Fraud in obtaining registration or renewal including, but not limited to:

(1) Intentionally submitting false information on an application for registration or renewal;

(2) Submitting a false or forged certificate or other record of training or certification.

- d.* Falsification of the assembly records required by subrule 26.6(2).
- e.* Failure to comply with these rules and with the ordinances of an administrative authority in whose jurisdiction the registered tester tests a backflow prevention assembly.
- f.* Failure to pay a required registration, renewal or late fee.
- g.* Habitual intoxication or addiction to drugs.
- h.* Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to backflow prevention assembly testing, including but not limited to crimes involving dishonesty, fraud, theft, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- i.* Having the authorization to test backflow prevention assemblies suspended or revoked or having other disciplinary action taken by a licensing or certifying authority of another state, territory or country. A copy of the record or order of suspension, revocation or disciplinary action is conclusive evidence.
- j.* Knowingly making misleading, deceptive, untrue, or fraudulent representations regarding the testing of backflow prevention assemblies, or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts which may constitute unethical conduct include, but are not be limited to:
 - (1) Verbally or physically abusing a client or coworker.
 - (2) Improper sexual contact with or making suggestive, lewd, lascivious, or improper remarks or advances to a client or coworker.

ITEM 14. Rescind subrule 26.8(2) and adopt the following **new** subrule in lieu thereof:

26.8(2) The department may deny or revoke the approval for a training course or a continuing education course when it finds:

- a.* The lead instructor for a training course is not qualified in accordance with paragraph 26.4(1) “*f.*”
- b.* The training course did not comply with paragraph 26.4(1) “*e.*”
- c.* That the training course testing laboratory did not comply with paragraph 26.4(1) “*g.*”
- d.* The organization or person applying for approval of a training or continuing education course intentionally submitted false information to the department in support of such approval.
- e.* The organization or person conducting or sponsoring training has falsified training or continuing education records, including issuance of a certificate or other record of training to a person who did not successfully complete a training course or who did not attend continuing education training.
- f.* The organization or person responsible for a training or continuing education course has permitted physical or verbal abuse or sexual harassment of a student or instructor. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- g.* The organization or person responsible for training courses and continuing education courses consistently fails to notify the department of such courses in a timely fashion as required by 26.4(1) “*d.*” and 26.4(2) “*a.*” or fails to pay the required fee.

ITEM 15. Amend subrule 26.8(4) as follows:

26.8(4) Complaints. Complaints regarding a registered tester, an approved training course or a third-party certification agency shall be made in writing and sent to the department at Iowa Department of Public Health, Division of ~~Health Protection and~~ Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

- a.* to *d.* No change.

ITEM 16. Amend paragraphs **26.8(5)“b”** and “**j**” as follows:

- b.* An appeal of a denial, suspension or revocation shall be submitted by certified mail, return receipt requested, within 30 days of receipt of the department’s notice. The appeal shall be sent to Iowa Department of Public Health, Division of ~~Health Protection and~~ Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within

the 30-day time period, the notice of denial, suspension or revocation shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, suspension or revocation. If no appeal is submitted within 30 days, the denial, suspension or revocation shall become the department's final agency action.

j. Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent by certified mail, return receipt requested, or by personal service to the department at Iowa Department of Public Health, Division of ~~Health Protection and~~ Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075.